

Operation LINDEN

Unsolicited Marketing Communications Strategy Meeting

Ofcom, Riverside House, London, 04 May 2017, 10:30am

Attending

Chair:

- David Clancy, ASIT Team Manager (Enforcement), ICO
- Natasha Longson, ASIT Team Manager (Enforcement), ICO
- Kerry Smith, Lead Intelligence Officer (Enforcement), ICO
- Gerald Oppenheim (FR)
- Dr Michelle Goddard, Market Research Society
- Stephen Sullivan (Channel Doctors / DMA Contact Centre Council Member)
- Sarah Blacker (BT)
- Susan Young, BT
- Alan Tonge, Insolvency Service
- Marcus Kirby, Insolvency Service
- Linda Crowley, Buckinghamshire and Surrey Trading Standards
- George Kidd, Direct Marketing Commission
- Siobhan Woolmer, Gambling Commission
- Greg Williams, MOJ CMRU
- Kate Moore, MOJ CMRU
- John Mitchison, Direct Marketing Association (DMA)
- Mike Lordon, Direct Marketing Association (DMA)
- Arthur Cummings, Direct Marketing Association (DMA)
- Eric Bash, OFCOM
- Michelle Koretz, OFCOM
- Alisdair McLaughlin, Insurance Fraud Bureau (IFB)
- John Hodge, Phone-paid Services Authority (PSA)
- Nick McAndrews, Citizens Advice

Apologies

- Kevin Smallwood, Charity Commission
- Richard Clarke, National Trading Standards Scams Team (NTSST)
- Debra Harding, Market Research Society
- Sarah Fox, Fundraising Regulator (FR)

Aim of LINDEN

To capture and share intelligence effectively and identify, plan, deliver and promote coordinated activity to maximise enforcement opportunities against individuals and organisations responsible for breaching legislation associated with unsolicited marketing texts, live and automated calls and silent or abandoned calls. To protect the privacy and consumer rights of individuals and to improve compliance.

ICO updates

Enforcement

Summary of 2016/17

- 23 monetary penalties for PECR contraventions (compared to 17 in 2015-2016).
- Total penalty amount for PECR only was £1,923,000
- Of the 23 penalties; 12 companies paid or are paying, 2 cases subject to ongoing appeals, 2 subject to payment plans 9 liquidated and being pursued for recovery
- Total of £550,400 paid
- 1st DPA penalty for a supplier issued for £20k.
- 9 Enforcement Notices issued
- Prosecuted 6 companies/directors for related DPA offences with Court awarding £8,021 in fines and costs.
- 18 companies placed on monitoring
- 31 compliance meetings held

Intelligence

In 2016/17 a total of 166,099 complaints were submitted directly to the ICO online reporting tool; 82,011 automated calls, 65691 live calls and 18,397 SMS spam.

For comparison, the total number of complaints received in 2015/16 was 159,546 and in 2014/15 were 178,950. The slight increase in 2016/17 might be attributed to the unprecedented volume of automated boiler calls and the ICO's improved online reporting tool enabling the public to more easily report individual concerns.

The total number of concerns reported to the ICO for April was 7,699; the lowest reported figure since December 2013 when 6,795 concerns were received.

Despite this very low number of reported concerns in April, there has still been a year on year increase in the overall number of reported concerns. Between 1 January and 30 April 2017 we received a total of 50,620 concerns. For the same period in 2016, a total of 42,282 concerns were received (this is an increase for this year of approximately 20%). If the current downward trend in reporting continues then we can expect this increase to reverse.

Activity and action updates

Gambling Commission

- Continue to receive intelligence from the ICO's monthly threat assessment
 - Engaging more with operators
 - Have obtained access to mobile network data via the '7726' service
 - Formal advice note regarding marketing to self-excluded customers (includes information re PECR)
 - Reviewing Gambling Commission Codes with view to including references to PECR
- GK asked SW if the spam is mainly from affiliates. SW confirmed that this was the case.

CMRU

Enforcement:

- £68,000 fine imposed on Zebra Claims Ltd for failing to undertake sufficient due diligence on data, and sufficiently monitor agents.
- £553,000 fine imposed on Help Your Claim Ltd for providing misleading information during telemarketing calls and engaging in high pressure selling (amongst other breaches).
- £10,000 fine imposed on Stevenson Drake Ltd for failing to undertake sufficient due diligence on data.
- £6,600 fine imposed on TDP Direct Marketing Ltd for failing to undertake sufficient due diligence on data.
- Cancellation of Barrington Claims Ltd's authorisation for failing to allow consumers sufficient time to read terms and conditions, providing misleading information during telemarketing calls and failing to undertake sufficient due diligence on data (amongst other breaches).
- Audited 20 CMCs engaged in direct marketing and issued written advice.
- Warned 4 CMCs for direct marketing breaches.
- Commenced new investigations into 8 CMCs and progressed formal investigations into a further 10 CMCs for possible breaches of rules relating to nuisance calls, texts and emails.
- Continued with pro-active projects on due diligence, data suppliers and electronic marketing. 3 businesses being formally investigated for breaches identified as part of these projects.
- Continued to share intelligence with the ICO. Quarterly information received from the CAB. Information received from insurers.
- Issued joint guidance with the ASA on misleading marketing, which was circulated directly to financial claims CMCs.
- Publication of the fines against CMCs / cancellation of authorisation listed above.
- Reforms delayed due to the General Election; transfer of CMRU to the FCA

IFB

- Seeing high levels of cold calls, data phishing and use of false names
- Organisations persuading individuals to claims for genuine incidents when they wouldn't normally have done so. IFB has seen an organisation's turnover increase from £100,000 in Year 1 to £8 million in Year 2 using these tactics.
- Best Practice Guide v2 due to be issued

PSA

- Seeing decrease in customer contacts and this may be in part due to;
 - MNOs have put measures in place, double-opt in now required
 - PSA have put special conditions in place for online competitions and adult services
- Ongoing investigation into Telecom2; IVR directs consumers to a drop charge of £15.98 to connect and £7.95 per minute thereafter. PSA working with the ICO on this case
- Directory enquiry service investigation; £645,000 fine issued on organisation. Operators moving more to this type of direction service. E.g. consumer searches for HMRC, DVLA etc. and organisation charges for the re-direction.

DMA – TPS

- Approximately 6,000 complaints for April
- Changes to how the complaints data is being forwarded to the ICO

BT

- Nuisance Call Advice Line (NCAL); average 14,000 per month. This figure is up and possibly due to the 2 million customers who have signed up to BT Protect and changes to how data is collected
- Majority of complaints are about live calls

DC provided an update on the **Nuisance Calls Commission (Scotland)**

- The Commission is looking at joint working between regulators and voluntary organisations.

Insolvency Service

- The Service fulfils a range of statutory functions. The Official Receiver administers compulsory individual and corporate insolvencies and is accountable to the court as an officer of the court. As a statutory office holder, he/she is responsible to the company's creditors and contributories or the bankrupt for the administration of the estate. The Official Receiver exercises powers under orders of the court, the Insolvency Act 1986, the Companies Act 1985 and the Company Directors Disqualification Act 1986 to secure and realise the assets of the company and to conduct confidential investigations into the causes of failure and the conduct of directors, following their appointment as liquidator of a company. These investigations may lead to a number of outcomes including the disqualification of its directors or the disclosure of information to prosecuting authorities or other regulators.
- The Service also delivers a range of public services on behalf of the Secretary of State. It exercises powers and duties on behalf of the Secretary of State from the Insolvency Acts 1986 and 2000, the Company Directors Disqualification Act 1986, the Employment Rights Act 1996 and the Companies Acts 1985 and 2006, as well as from a range of secondary legislation relating to these Acts.

The Service maintains and enforces an effective framework for commercial activity and, in particular:

- Investigates the conduct of directors of companies
- Brings disqualification cases against unfit directors. Disqualification is for between 2-15 years. Breach is a criminal offence.
- Carries out confidential fact finding investigations under S447 Companies Act 1985 into 'live' companies where it is in the public interest. The Service has a long history of tracking and closing down boiler rooms, investment scams, pension liberation frauds – all of which have a cold calling element. The Service is aware that multiple companies are being used to facilitate fraud and will consider whether another regulator is best placed before using these powers.
- Reports suspected criminal offences to the appropriate prosecuting authority

The Service has recently liaised with the ICO resulting in:

- The ICO providing evidence of disqualified directors acting whilst disqualified which are now being considered by The Service's Criminal Enforcement Team

- The ICO providing supporting information/evidence to assist The Service's investigations into insolvent companies
- Both parties discussing the trialling of a case where there is no insolvency event but The Service could use ICO investigative material to bring a disqualification under S8 CDDA
- The Service and the ICO are working towards the signing of a Memorandum of Understanding

Any queries or concerns regarding 'live' or insolvent companies or directors acting in breach of disqualification should be addressed to intel.team@insolvency.gsi.gov.uk

Surrey and Berkshire Trading Standards (SBTS)

- SBTS used POCA funds to buy 200 Truecall units; 86 are currently live
- Data from these call blockers has been passed to the ICO
- National Trading Standards Scams Team; Friends Against Scams awareness training to provide awareness of scams is being cascaded through the country

MRS

- Ltd complaints about lifestyle surveys and guidance on telephone research
- New MRS regulations on predictive diallers reflect new Ofcom provisions on persistent misuse

OFCOM

- Contact made with several communications providers identified as carrying potential fraudulent/nuisance traffic. The outcome has been termination of service to several end users, predominantly in India and Far East.
- Possible publication of an activity update to draw attention to our informal work with communications providers, plus highlighting the work going on at major CPs to block traffic on their networks.
- 2,243 complaints; 35% fall on average monthly complaint of last year and the lowest since 2013. Complaints down in part to blocking activities by OFCOM and service providers.

Direct Marketing Commission (DMC)

- 65 complaints – 10 complaints against DMA members
- Formal adjudication – January – Data Locator Group/PDV:
The Commission had upheld breaches of two Code provisions – 3.11 and 4.3.
- DMC Review: ongoing review of case handling and the role of the IAC and the appeals process. In the last quarter the DMC have been looking at the post adjudication process, evaluation and grounds of appeal.
- Consent timescales - Working with DMA on possible guidance/Code amends re use of first and third party data: a particular issues with lead-generation survey calls.
- DMC have made the following conclusion re multi-client lead generation/lifestyle survey calls; not adequate to recite the names of the sponsors of a survey at the end of a call as this information is critical to "informed consent" and surveys generally claim this "consent" when the call starts using the alleged consent as a TPS over-ride.

Fundraising Regulator

- Charity Conference hosted by the FR, Charity Commission and the ICO on 21/02/17. 350 charities and Higher Education Authorities attended. The Conference included presentation relating to consent and good practice.
- FR guidance launched; Data Protection and fundraising
- Working with 13 charities to ensure no recurrence of DP and PECR breaches
- 713 complaints received up to the end of March 2017. Spikes noted in November, January and February. 621 cases closed with 92 in hand. Many cases closed as not relevant to the FR.
- Outcome of investigations due to be published soon (anonymised where charities accept findings)
- Requests for information from the Insolvency Service; looking at directors of fundraising organisations
- Concerns around crowdfunding; some of these sites considering a Code of Practice
- Continuing to pursue charities who haven't paid the FR levy

Citizens Advice

- Reduction in nuisance call complaints but have seen more visits to local offices and website about nuisance calls
- Call blocking, PPI and personal injury are the most reported topics
- Rise in scams; premium rate SMS and calls relating to HMRC and DWP etc.
- Passing data to the ICO and the CMRU; most complaints from the south east, south west and eastern England
- Reputable organisations' names being spoofed
- Can you hear me scam – call states 'can you hear me' and individual responds 'yes'. This response is recorded and then used to consent for other services and products etc.

Fundraising Regulator – Fundraising Preference Service presentation

- FPS due to be launched within the next two months.
- Online and phone service will be available
- Registration is permanent; any new direct arrangement with an organisation overrides the FPS
- FPS doesn't cover door to door fundraisers

Charities – summary of Op CINNABAR

- The investigation has resulted in thirteen civil monetary penalties being issued to the value of £181,000.
- Two 'best practice' Undertakings signed by the British Red Cross and Age International, which committed them to compliance over and above the minimum requirements of the law.
- An Information Risk Review with a call centre associated with the allegations; Listen Limited.
- In total, 17 meetings about DPA/PECR compliance with 15 charities and two call centres.
- Advice letters for six charities where no further action was proposed, four of these had follow up meetings.
- Three charities were placed on monitoring.
- Charity fundraising conference in February 2017, held with the Charity Commission and the Fundraising Regulator, to highlight good practice.

- Memorandums of Understanding agreed with the Charity Commission, Fundraising Regulator (and predecessor Fundraising Standards Board).

TPS

- ICO taken over management of service.
- Look to improve effectiveness of reporting.
- Enter into procurement exercise this year ahead of new service from February 2018.

Email Spam

- The ICO has been examining the intelligence gathered in relation to email complaints
- All sectors are responsible for email spam
- Increase in organisations purposely using their opted-out list to contact individuals with marketing including a 'check your preferences' email
- 2016/17 – 3 organisations fined £125,000
- Ongoing investigations in 2017/18

International Enforcement

The ICO is part of the UCENet (the Unsolicited Communications Enforcement Network) Executive Committee alongside the Australian Communications & Media Authority, the Canadian Radio-television and Telecommunications Commission, the Dutch Consumer and Markets Authority, the New Zealand Department of Internal Affairs, the US Federal Trade Commission and the Korean Information Security Agency.

Other UCENet members include regulators (data protection, consumer and telecoms) as well as industry representatives and consumer organisations.

- Planning continues for the first ever UCENET Sweep with the UK ICO and Canadian CRTC leading. The Sweep will focus on affiliate marketing with 14 authorities now down to take part (including the PSA, CMRU, Gambling Commission and FCA from the UK). The final version of the Sweep Kit is just being signed off internally and will shortly go out to participants. This will include further detail as to how authorities may want to conduct the Sweep. The plan is for the Sweep to take place in June, although the date is still TBC.
- At the ICO will be looking at links within SMS and emails which suggest affiliate networks are in use, as well as information on websites and cookies placed. KS explained that will also be interested in the findings of others taking part, especially those authorities in the UK. This work links into our work on Op HIDA.
- The ICO took part on an ICPEN (International Consumer Protection and Enforcement Network) panel on lead generation/list brokerage last week, using our Op HIDA to demonstrate the scope of the industry.
- The ICO will be leading the GPEN Sweep w/c 22 May looking at 'user controls' over their data. Findings will be announced later this year.

AOB

- AT (IS) advised how networks of companies are involved in marketing and intelligence / referrals can be forwarded to intel.team@insolvency.gsi.gov.uk

- JM (DMA) – Guidance on how to interpret OFCOM's persistent misuse rules launched [DMA advice on persistent misuse](#)

DC thanked everyone for attending and closed the meeting.